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ROBBIE CARROLL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBBIE CARROLL, an individual,

Case No.:

Plaintiff,

VS.

NISSAN NORTH AMERICA, INC.,
a Delaware Corporation, and DOES
1 through 10, inclusive,

Defendants.

COMPLAINT

1. **VIOLATION OF SONG-BEVERLY ACT - BREACH OF EXPRESS WARRANTY**
2. **VIOLATION OF SONG-BEVERLY ACT - BREACH OF IMPLIED WARRANTY**
3. **VIOLATION OF THE SONG-BEVERLY ACT SECTION 1793.2**
4. **FRAUD – FRAUDULENT INDUCEMENT – CONCEALMENT**

1 Plaintiff, ROBBIE CARROLL (“Plaintiff”), an individual, alleges as follows
 2 against Defendant, NISSAN NORTH AMERICA, INC., a Delaware Corporation
 3 (“NISSAN NORTH AMERICA, INC.”), and DOES 1 through 10 inclusive, on
 4 information and belief, formed after a reasonable inquiry under the circumstances:

5 **INTRODUCTION**

6 1. These causes of action arise out of the warranty obligations of NISSAN
 7 NORTH AMERICA, INC.in connection with a vehicle purchased by Plaintiff and
 8 for which NISSAN NORTH AMERICA, INC. issued a written warranty.

9 2. On January 27, 2020, Plaintiff purchased a 2020 Nissan Kicks, having
 10 VIN No.: 3N1CP5CV1LL483411 (“the Subject Vehicle”). These causes of action
 11 arise out of warranty and repair obligations of NISSAN NORTH AMERICA, INC.
 12 in connection with a vehicle that Plaintiff purchased and for which NISSAN NORTH
 13 AMERICA, INC. issued a written warranty. The warranty was not issued by the
 14 selling dealership.

15 3. The Subject Vehicle was delivered to Plaintiff with serious defects and
 16 nonconformities to warranty and developed other serious defects and
 17 nonconformities to warranty such as suspension, electrical, transmission, steering,
 18 and engine system defects including, but not limited to: defects causing the Subject
 19 Vehicle to stall when sitting a stop for less than a minute; defects causing the Forward
 20 Emergency Braking (“FEB”) system to falsely engage or otherwise not work as
 21 intended; defects causing the Subject Vehicle to detect non-existent obstacles,
 22 thereby automatically triggering the brakes and causing an abrupt slowdown or
 23 complete stop with no actual need to do so; defects causing the FEB system to
 24 deactivate itself, thereby distracting the driver and rendering the FEB system disabled
 25 and useless; defects causing the Subject Vehicle’s dashboard to indicate that there is
 26 something in front of the vehicle; defects causing the Subject Vehicle’s dashboard to
 27 indicate that there is an automatic braking error; defects causing the Subject Vehicle
 28 to shake vigorously when approaching a stop; defects causing the Subject Vehicle’s



1 forward collision light to appear on the dashboard when nothing is in front of the
2 vehicle; defects causing the Subject Vehicle to stop without warning during normal
3 and intended vehicle operation; defects causing the Subject Vehicle significant,
4 unexpected, phantom decelerations and stops due to the false engagement of the FEB
5 system, despite no objects—vehicles, pedestrians, or otherwise—were nearby;
6 defects causing the FEB system to frequently deactivate itself; and/or any other
7 defects described in the repair history for the Subject Vehicle (collectively,
8 “Defects”). Said defects substantially impair the use, value, or safety of the Subject
9 Vehicle.

10 4. Plaintiff hereby revokes acceptance of the sales contract.

11 5. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter “the
12 Act”) Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a “consumer
13 good” used primarily for family or household purposes, and Plaintiff has used the
14 vehicle primarily for those purposes.

15 6. Plaintiff is a “buyer” of consumer goods under the Act.

16 7. Defendant NISSAN NORTH AMERICA, INC. is a “manufacturer”
17 and/or “distributor” under the Act.

18 8. Plaintiff hereby demands trial by jury in this action.

19 **Plaintiff’s Repair History of the Subject Vehicle**

20 9. The following is a summary of some pertinent portions of the repair
21 visits for the Subject Vehicle.

22 10. On April 22, 2021, with approximately 10,221 miles on the odometer,
23 Plaintiff presented the Subject Vehicle to Defendant’s authorized repair facility,
24 complaining that the Subject Vehicle would pull to the right. Defendant’s technician
25 verified Plaintiff’s complaint, noting that the TOE was out of range, and in response,
26 performed a TOE adjustment and wheel alignment. Additionally, Plaintiff reported
27 that the Subject Vehicle would not come to a proper stop without warming up at least
28 one to three stops beforehand. Further, Plaintiff also complained that the Subject



1 Vehicle's brakes were not functioning as intended, along with a squeaking noise
2 coming from the brakes when engaged. The inspection and repair were performed
3 under the warranty issued by NISSAN NORTH AMERICA, INC. The Subject
4 Vehicle was out of service for approximately 1 day during this repair attempt.

5 11. On October 9, 2021, with approximately 14,378 miles on the odometer,
6 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility,
7 complaining for the second time that the Subject Vehicle continues to pull to the
8 right. The inspection was performed under the warranty issued by NISSAN OF
9 NORTH AMERICA, INC. The Subject Vehicle was out of service for approximately
10 1 day during this repair attempt.

11 12. On March 17, 2022, with approximately 18,164 miles on the odometer,
12 Plaintiff's Subject Vehicle had to be towed into the Defendant's authorized repair
13 facility. Plaintiff complained that the Subject Vehicle's forward collision light
14 illuminated on the dashboard when nothing was in front of the vehicle. Furthermore,
15 Plaintiff also reported that the Anti-Locking Braking System (ABS) light, the
16 Traction Control light, and the Rear Collision Warning light were illuminated on the
17 Subject Vehicle's dashboard. Finally, Plaintiff complained that the Subject Vehicle
18 seemed to lack power upon acceleration. Plaintiff's concerns were verified by
19 Defendant's authorized repair facility. The inspection and repairs were performed
20 under the warranty issued by NISSAN OF NORTH AMERICA, INC. The Subject
21 Vehicle was out of service for approximately 1 day during this repair attempt.

22 13. On March 25, 2022, with approximately 18,354 miles on the odometer,
23 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility, and
24 reported two complaints: a loud squeak when braking, and a clicking noise coming
25 from the front end when slowing down and engaging the brakes. Defendant's
26 technician verified Plaintiff's complaint, and confirmed that the noise was coming
27 from the front axles. The inspection and repairs were performed under the warranty
28 issued by NISSAN OF NORTH AMERICA, INC. The Subject Vehicle was out of



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1 service for approximately 2 days during this repair attempt.

2 14. On April 1, 2022, with approximately 18,482 miles on the odometer,
 3 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility, and
 4 reiterated the complaint from the prior visit, namely, a clicking noise from the front
 5 end when slowing down and engaging brake. Defendant's technician verified
 6 Plaintiff's complaint, and noted that both axles' assembly are making clicking noises
 7 when braking. In response, the technician replaced both front axles' assembly. The
 8 inspection and repairs were performed under the warranty issued by NISSAN OF
 9 NORTH AMERICA, INC. The Subject Vehicle was out of service for approximately
 10 2 days during this repair attempt.

11 15. None of the aforementioned repair attempts successfully repaired the
 12 Subject Vehicle, including its ongoing defects.

13 16. Thereafter, Plaintiff continued to experience symptoms of the various
 14 defects despite Defendant's representation that the Subject Vehicle was repaired.

15 17. Defendant was under an affirmative duty under the Song-Beverly
 16 Consumer Warranty Act to promptly offer to repurchase or replace the Subject
 17 Vehicle as soon as it failed to conform the Subject Vehicle to the terms of the express
 18 warranty after a reasonable number of repair attempts.

19 18. Despite having no obligation to do so, prior to filing this lawsuit,
 20 Plaintiff contacted Defendant NISSAN OF NORTH AMERICA, INC. directly and
 21 requested a repurchase of the Subject Vehicle due to the ongoing issues that
 22 Defendant and its authorized repair facilities could not repair to conform the vehicle
 23 to the terms of its written warranties within a reasonable number of repair
 24 opportunities. Defendant denied Plaintiff's request.¹

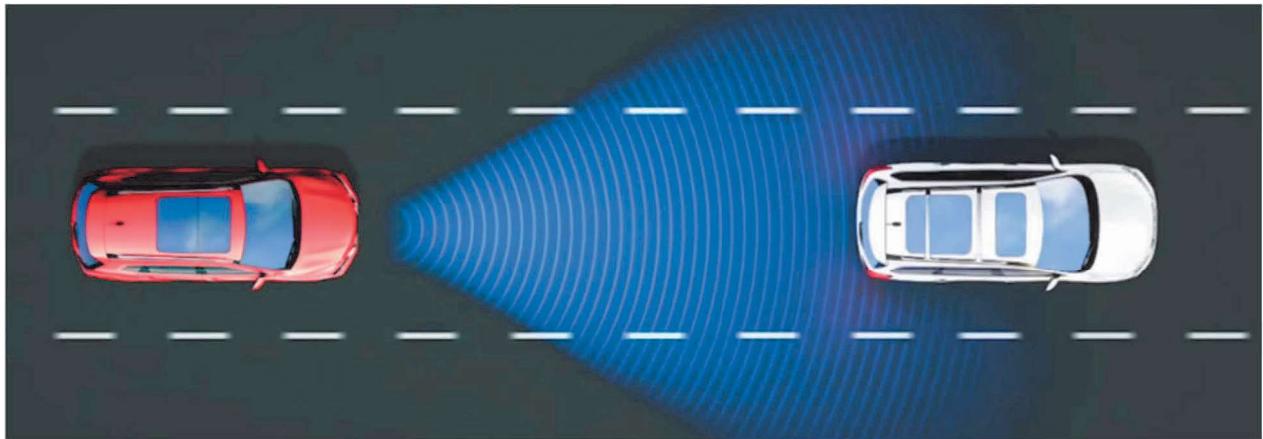
25 ///

26 26¹ "A manufacturer's duty to replace a vehicle does not depend on a consumer's request, but instead
 27 arises as soon as the manufacturer fails to comply with the warranty within a reasonable time.
Krotin v. Porsche Cars North America, Inc., 38 Cal.App.4th 294, 301-302 (1995). *Krotin* court
 28 noted that "[a]n automobile manufacturer need not read minds to determine which vehicles are
 defective; it need only read dealers' services records." *Id.* at 303.

1 **Defendant's Knowledge of, and Failure to Disclose, the FEB Defect**

2 19. In 2017, NISSAN NORTH AMERICA, INC. began offering the feature
 3 known as Forward Emergency Braking ("FEB") as an option on the various Nissan
 4 models. For example, FEB was available as a part of the \$2,020 "SL Premium Package"
 5 option on the 2017 Nissan Rogue SL.

6 20. As demonstrated below, the FEB system utilizes a radar and/or camera
 7 system that measures the distance between the vehicle and its surrounding objects. If
 8 the FEB system detects a rapid decrease in distance between the vehicle and an object
 9 accompanied with no driver responsive inputs, the FEB system "provide[s] audible
 10 and visual alerts and appl[ies] braking to help you avoid or mitigate a frontal collision
 11 with a vehicle ahead."



12 21. However, NISSAN NORTH AMERICA, INC. under-designed,
 13 engineered, tested, and validated the FEB system. The FEB Defect, among other things,
 14 causes: (1) the Subject Vehicle to detect non-existent obstacles, triggering a braking
 15 response and causing the Subject Vehicle to abruptly decelerate or stop completely
 16 despite no need for this action, and/or (2) the FEB system to deactivate itself, thereby
 17 distracting the driver and rendering the FEB system unavailable and useless. The FEB
 18 Defect presents a safety hazard that distracts Plaintiff and renders the Subject Vehicle
 19 unreasonably dangerous to consumers as it severely impacts a driver's ability to control
 20 the vehicle's speed as expected under normal driving conditions and maintain an
 21 appropriate speed based on traffic flow, thereby increasing the risk of a rear-end
 22 collision.

1 collision.

2 22. NISSAN NORTH AMERICA, INC. knew about the problem of false
3 activations in its FEB systems years before it put the first vehicle on the market.
4 NISSAN NORTH AMERICA, INC. became aware of the FEB Defect through
5 sources not available to Plaintiff, including, but not limited to: pre-production testing,
6 pre-production design failure mode and analysis data, production design failure mode
7 and analysis data, early consumer complaints made exclusively to NISSAN NORTH
8 AMERICA, INC.'s network of dealers and directly to NISSAN NORTH AMERICA,
9 INC., aggregate warranty data compiled from NISSAN NORTH AMERICA, INC.'s
10 network of dealers, testing conducted by NISSAN NORTH AMERICA, INC. in
11 response to consumer complaints, and repair order and parts data received by
12 NISSAN NORTH AMERICA, INC. from NISSAN NORTH AMERICA, INC.'s
13 network of dealers and suppliers, including Bosch and Continental.

14 23. In addition, NISSAN NORTH AMERICA, INC. and other members of
15 the automotive industry knew that as a new and not fully developed technology,
16 automatic braking systems like FEB were prone to false activations. NISSAN
17 NORTH AMERICA, INC. manufactured and sold the Subject Vehicle equipped with
18 this technology anyway.

19 24. As further evidence of NISSAN NORTH AMERICA, INC.'s pre-sale
20 knowledge, the owner's manuals for the earliest vehicles alluded to the risk of false
21 activations by stating "in some road or traffic conditions, the FEB system may
22 unexpectedly apply partial braking." This warning about the FEB system was buried
23 in small text in the middle of owner's manuals, which are several hundred pages long.
24 Notwithstanding the FEB system being touted as a safety feature, NISSAN NORTH
25 AMERICA, INC. never referenced or otherwise directed potential purchasers to this
26 hidden disclaimer. As such, Plaintiff would only see this disclosure, if at all, after
27 purchasing or leasing the vehicle, and if he happened to stumble upon it when reading
28 the owner's manual. Even then, however, the disclosure is too vague, cursory, and

1 non-specific to adequately warn anyone about the true scope and extent of the
2 dangers of the FEB Defect.

3 25. NISSAN NORTH AMERICA, INC. also began receiving an unusually
4 large number of complaints about false activations almost immediately after the
5 earliest vehicle entered the market. Nonetheless, NISSAN NORTH AMERICA, INC.
6 continued to sell the vehicle and continued to install the Continental ARS-410 radar
7 in newer model-year vehicles.

8 26. NISSAN NORTH AMERICA, INC. had, and continues to have, a duty
9 to fully disclose to Plaintiff the true nature of the FEB Defect, because, among other
10 reasons, the Defect poses an unreasonable safety hazard; because NISSAN NORTH
11 AMERICA, INC. had and has exclusive knowledge or access to material facts about
12 the vehicle's FEB systems that were not and are not known to, or reasonably
13 discoverable by Plaintiff; and because NISSAN NORTH AMERICA, INC. has
14 actively concealed the FEB Defect from Plaintiff at the time of purchase or repair
15 and thereafter.

16 27. Specifically, NISSAN NORTH AMERICA, INC.: (a) failed to disclose,
17 at the time of purchase or repair and thereafter, any and all known material defects
18 or material nonconformities of the Subject Vehicle, including the FEB Defect; (b)
19 failed to disclose, at the time of purchase or repair and thereafter, that the Subject
20 Vehicle and the FEB systems were not in good working order, were defective and
21 prone to failure, and were not fit for the intended purpose; and (c) failed to disclose
22 and/or actively concealed the fact that the Subject Vehicle and the FEB system was
23 defective, despite the fact that NISSAN NORTH AMERICA, INC. learned of the
24 FEB Defect before it placed the Subject Vehicle in the stream of commerce.

25 28. On June 8, 2018, NISSAN NORTH AMERICA, INC. released TSB
26 NTB18-041 concerning the "Unexpected Operation of AEB, FEB OR FCW
27 [Forward Collision Warning]" in 2018 Rogue, Rogue Hybrid, and Rogue Sport
28 vehicles. The TSB stated that "The following system(s) operate unexpectedly or the



1 customer reports unexpected operation: AEB (Automatic Emergency Braking); FEB
2 (Forward Emergency Braking); FCW (Forward Collision Warning). On July 19,
3 2018, Nissan released an amended TSB NTB18-041a, updated to include 2017-18
4 Rogue, Rogue Hybrid, and Rogue Sport vehicles. Neither of these TSB67s prevented
5 false activations from occurring, and Nissan continued to receive complaints about
6 false activations after issuing these TSBs.

7 29. Since mid-2018, NISSAN NORTH AMERICA, INC. has issued
8 approximately 11 different TSBs, quality actions, or other service campaigns directed
9 at eliminating false activations in the Subject Vehicle. To this day, NISSAN NORTH
10 AMERICA, INC. still has not found a solution to false activations.

11 30. On January 25, 2019, NISSAN NORTH AMERICA, INC. released
12 NPSB18-443 AEB U – “Automatic Emergency Braking (AEB) Update Notification
13 Letter” – related to the 2017-2018 Nissan Rogue and Rogue Sport. In this bulletin,
14 NISSAN NORTH AMERICA, INC. stated “[i]n rare instances and unique roadway
15 environments such as certain types of railroad crossings and metal overpasses, the
16 AEB system in some vehicles may activate braking when not needed.” However, the
17 statement that false activations only occurred in “rare instances and unique roadway
18 environments” was false, and NISSAN NORTH AMERICA, INC. knew that the
19 statement was false. Drivers were experiencing false activations in ordinary and
20 common driving scenarios, like two-lane streets, highways, and parking garages.

21 31. As the Center for Auto Safety (“CAS”) explained on March 21, 2019,
22 this “‘Customer Service Initiative’ intended to ‘increase awareness of an available
23 update for the Automatic Emergency Braking (AEB) system.’ Presumably, this
24 update is the repair outlined in the July 2018 TSB. ... [However,] the summary
25 portion available suggests that Nissan’s communication to Rogue owners does not
26 acknowledge the potential safety issue involved. The language treats the problem as
27 no more than a performance update, thus providing little incentive for consumers to
28



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1 avail themselves of the repair opportunity until they experience the problem.”²F²

2 32. Federal law requires automakers like NISSAN NORTH AMERICA,
 3 INC. to notify (and update) the National Highway Traffic Safety Administration of
 4 potential defects. *See* TREAD Act, Pub. L. No. 106- 414, 114 Stat. 1800 (2000).
 5 Accordingly, NISSAN NORTH AMERICA, INC. should (and does) monitor the
 6 NHTSA database to track reports of defective FEB systems. From this source,
 7 NISSAN NORTH AMERICA, INC. knew that the Subject Vehicle was experiencing
 8 unusually high levels of false engagements causing abrupt slowdowns, stops, or
 9 deactivations.

10 33. As CAS explains, it “found 87 such complaints in NHTSA’s VOQ data
 11 for the 2017-18 Rogue. All of these complaints indicate that the Rogue’s [FEB]
 12 engaged when no obstruction was in the path of the vehicle. Many complaints
 13 indicate that braking is abrupt or forceful, endangering both the Rogue occupants as
 14 well as people in vehicles nearby, who are forced to avoid a collision with a suddenly
 15 stopped vehicle.”¹F³

16 34. Additionally, in early 2019, NISSAN NORTH AMERICA, INC. issued
 17 a Notice of Defect for 91,000 model year 2017 and 2018 Rogue vehicles “because
 18 their automatic emergency braking (AEB) system could unintentionally engage.”²F⁴
 19 Despite acknowledging this dangerous defect to Transport Canada, NHTSA’s
 20 Canadian counterpart, NISSAN NORTH AMERICA, INC. has made no such efforts
 21 to recall any of its AEB-equipped vehicles in the United States, even though there
 22 are no differences between the Rogues that NISSAN NORTH AMERICA, INC. sells
 23

24 ² The Center for Auto Safety, Petition for Defect Investigation (Mar. 21, 2019),
 25 <https://www.autosafety.org/wp-content/uploads/2019/03/Center-for-Auto-Safety-Nissan-Rogue-AEB-Defect-Petition-FINAL.pdf> (last visited May 7, 2020). On March 21, 2019, CAS submitted
 26 a petition to NHTSA to “initiate a Defect Investigation into false activation of the emergency
 27 braking system that is placing Rogue owners and other road users in danger.” *Id.*

³ *Id.*

28 ⁴ Nissan Canada recalls 90,000 Rogues over unintended braking, AUTOMOTIVE NEWS
 CANADA, April 12, 2019, available at <https://canada.autonews.com/automakers/nissan-canada-recalls-90000-rogues-over-unintended-braking>.
 - 10 -

to Canadian consumers and those it sells to American consumers. Instead, it continued to equip Rogue and other Nissan-brand cars with the ARS410 radar.

35. In addition, in 2020, NISSAN NORTH AMERICA, INC. issued a recall for its X-Trail crossover SUV in Asia, which uses the same platform as the Nissan Rogue in the United States and Canada. As reported by one news agency in Asia, “[a]ccording to Nissan, these vehicles are fitted with a radar system made by Continental. The affected radar model, ARS410 may activate especially when the XTrailmaneuvers aroundbridges, parking garages, low-hanging traffic lights, and even steep incline roads.” At that time, NISSAN NORTH AMERICA, INC. suggested turning off the FEB system to avoid false activations until a software update could be installed. However, to date, NISSAN NORTH AMERICA, INC. still has not developed a software update that eliminates false activations.

36. The following example complaints filed by consumers with NHTSA and posted on the Internet demonstrate that the FEB Defect is a widespread safety hazard that continues to plague the Subject Vehicle. The complaints below are examples only, and do not represent the universe of complaints that NISSAN NORTH AMERICA, INC. has received. The number of complaints that NISSAN NORTH AMERICA, INC. received was unusually high, which put NISSAN NORTH AMERICA, INC. on further notice of the FEB Defect.

37. The following is an example of a Complaint regarding the FEB Defect:

Dec 31, 2017 - Vacaville, CA - Forward Collision Avoidance

THIS VEHICLE WAS PURCHASED NEW FROM THE DEALERSHIP, NISSAN OF VACAVILLE, ON 9-16-2017. ON 10-26-2017 WHILE TRAVELING AT APPROXIMATELY 35 MPH THE VEHICLE'S FORWARD EMERGENCY BRAKING SYSTEM (FEB) SUDDENLY AND UNEXPECTEDLY ACTIVATED, BRING THE CAR TO A FULL AND COMPLETE STOP IN THE MIDDLE OF THE ROAD. THE BRAKING SYSTEM DISENGAGED WITHIN A FEW SECONDS AND I WAS ABLE TO PULL TO THE SIDE OF THE ROAD. THERE WERE NO ADVERSE CONDITIONS, OBSTRUCTIONS, OR

1 VEHICLES WITHIN A DANGEROUS DISTANCE TO HAVE
2 CAUSED THE ACTIVATION. THE DASHBOARD WARNING
3 LIGHTS DISPLAYED THE ALERT MESSAGE “WARNING”
4 “MALFUNCTION.” THE VEHICLE WAS SUBSEQUENTLY
5 TOWED TO AUTOCOM NISSAN OF CONCORD FOR
6 SERVICE AND DIAGNOSIS. I WAS TOLD CODES U1002,
7 C1B5D, AND C1A16-97 WERE STORED IN THE COMPUTER
8 SYSTEM. C1A16-97 RELATES TO AN OBSTRUCTION OR
9 BLOCKED RADAR SENSOR, BUT THAT ALL THE STORED
10 CODES WERE IN THE PAST. C1A16-97 WAS STORED AT
11 1983 MILES - I EXPERIENCED NO ACTIVATION OF THE
12 SYSTEM AT THAT TIME. ACCORDING TO THE
13 DEALERSHIP THERE WERE NO STORED CODES RELATED
14 TO TODAY'S INCIDENT. NISSAN TECH LINE MADE A
15 REMOTE DIAGNOSIS AND CONCLUDED A LOOSE
16 LICENSE PLATE FRAME LIKELY HAD CAUSED AND
17 OBSTRUCTION, ACTIVATING THE SYSTEM. THIS IS IN
18 CONFLICT WITH THE OWNERS MANUAL'S
19 EXPLANATION OF FEB SHUT DOWN IN THE EVENT OF AN
20 OBSTRUCTION. ON 12-19-2017 I RETURNED THE VEHICLE
21 TO THE DEALERSHIP WHERE I PURCHASED THE CAR.
22 AFTER FOUR DAYS OF DIAGNOSTIC AND ROAD TESTING
I WAS TOLD THAT, ACCORDING TO NISSAN TECH LINE,
SINCE THE DEALERSHIP WAS UNABLE TO DUPLICATE
THE MALFUNCTION DURING THE TEST DRIVE, THEN THE
CAR IS CONSIDERED OPERATIONAL AND SAFE AND
COULD BE RETURNED TO THE CUSTOMER. AND
ALTHOUGH FINDING MULTIPLE PAST CODES STORED
ECM-UL00L, ASB-UL002, BCM UL000-00, UL000-01, CLB40-
49, CLB30-49, UL000-00, ICC /ADAS-C1B53-04, CLB54-00,
UL000-01 ALL INDICATION MALFUNCTION. NONE OF
WHICH HAVE BEEN RESOLVED OR REPAIRED. ## VIN
PASSED ## NISSAN ROUGE S FWD 2017.5 ##

23 38. The above complaint represents only a sampling of otherwise
24 voluminous complaints regarding the FEB Defect that consumers have reported to
25 NISSAN NORTH AMERICA, INC. directly and through its dealers.

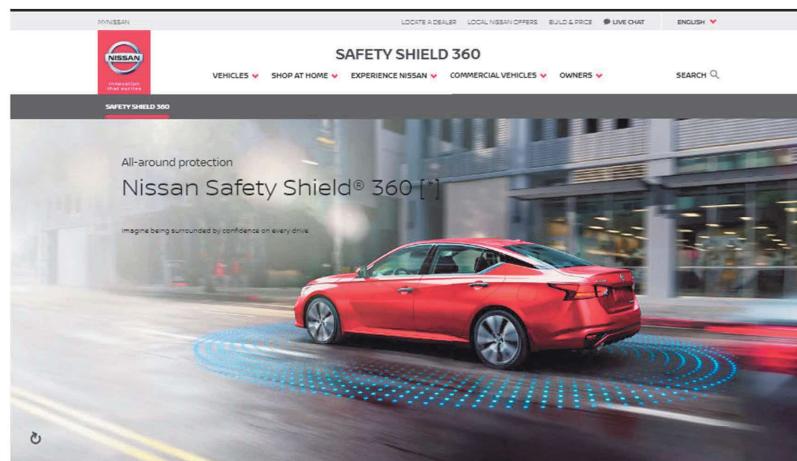
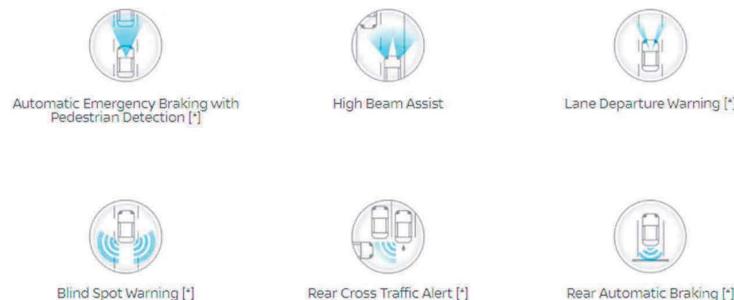
26 39. NISSAN NORTH AMERICA, INC. knew that the FEB Defect was
27 present in the Subject Vehicle equipped with the FEB system, as demonstrated above,
28 but it failed to remedy the defect. NISSAN NORTH AMERICA, INC.'s halfhearted



1 and unconscionable acts have deprived and continue to deprive Plaintiff of the benefit
 2 of his bargain. Had Plaintiff known about the FEB Defect, he would not have
 3 purchased the Subject Vehicle, or certainly would have paid less to do so.

4 40. NISSAN NORTH AMERICA, INC.'s overarching marketing message
 5 for the Subject Vehicle, and specifically the FEB System, was and is that the FEB
 6 System creates a safe and reliable vehicle. This marketing message is false and
 7 misleading given the FEB Defect, which distracts consumers and can cause the
 8 Subject Vehicle to suddenly and unexpectedly stop in the middle of the road.

9 41. For example, Nissan dedicates a page on its website for the Nissan
 10 Safety Shield 360, touting "[a]ll-around protection" and, specifically, the FEB
 11 System:⁵ 3F⁵



25 ///

26 ///

27 ///

28 ⁵ <https://www.nissanusa.com/safety-shield.html> (last visited Jun 19, 2022)

Innovation
that excites

NISSAN SAFETY SHIELD CONCEPT



These technologies monitor vehicle systems and the outside driving environment.

Vehicle Dynamic Control [^]

If VDC detects sudden over or under steer, it reduces engine power and/or applies brake pressure to individual wheels to help keep you on your steered path.

Traction Control System

TCS can sense drive-wheel spin and respond by reducing throttle or applying brake pressure to help maintain traction.

Anti-lock Braking System

In panic-braking situations the ABS rapidly pumps the brakes, helping prevent wheel lockup and helping you maintain steering control.

Electronic Brake Force Distribution

The EBD system sends extra force to the rear brakes when it senses

1. Monitor

Nissan is committed to its position as a leader in the world of automotive safety. This dedication to comprehensive safety goes into the engineering and design of every vehicle we make, and it drives the

INTELLIGENT INNOVATION THAT'S ON YOUR SIDE

Today's Nissan vehicles offer available technologies that help look out for you, and some of them CAN even take action and help you avoid trouble. The available Blind Spot Warning with available Blind Spot Intervention is just one feature in a comprehensive suite of Intelligent Safety Shield Technologies [^].



EXPERIENCE NISSAN

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SEARCH

NISSAN BLOG

NISSAN INTELLIGENT MOBILITY

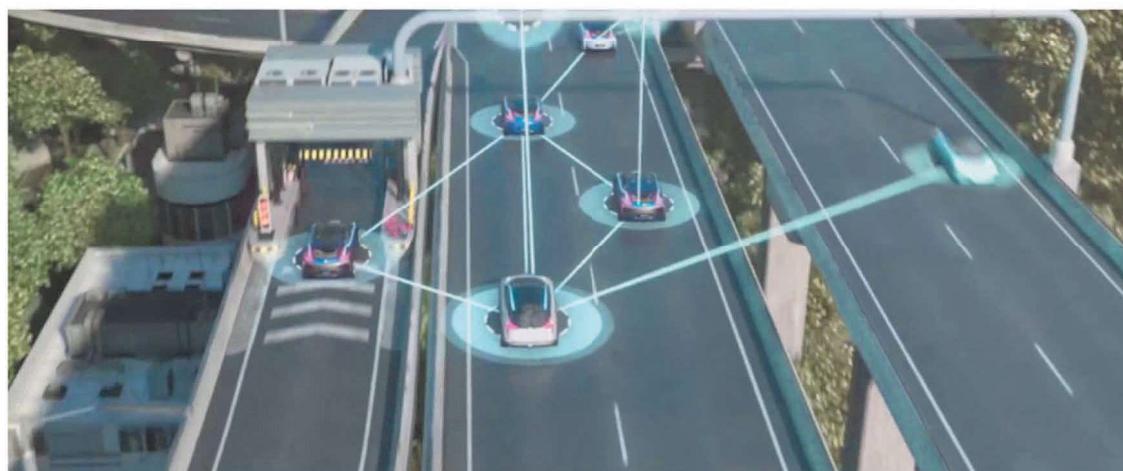
NISSAN® PERFORMANCE

PARTNERSHIPS

SOCIAL MEDIA

WHAT IS NISSAN INTELLIGENT MOBILITY?

Cars that can think, communicate, learn, predict, recharge, and do it all as your partner. Nissan Intelligent Mobility is a suite of integrated technology that is designed to increase safety, comfort, and control while driving, connecting you with your vehicle and the world around you. The future of driving has arrived.



1 42. That NISSAN NORTH AMERICA, INC. touted the safety and
 2 reliability of the Subject Vehicle and the FEB system while knowing of the FEB
 3 Defect and its gross underperformance, is unfair and unconscionable.

4 43. Although NISSAN NORTH AMERICA, INC. was aware of the
 5 widespread nature of the FEB Defect in the Subject Vehicle, and that it posed grave
 6 safety risks, NISSAN NORTH AMERICA, INC. failed to take adequate steps to
 7 notify Plaintiff of the FEB Defect and provide relief.

8 44. NISSAN NORTH AMERICA, INC. has not recalled the Subject
 9 Vehicle to repair the FEB Defect and has downplayed the severity of the FEB Defect
 10 in service campaigns. It has not offered Plaintiff a suitable repair or replacement of
 11 parts related to the FEB Defect free of charge, or offered to reimburse Plaintiff for
 12 costs incurred for repairs related to the FEB Defect.

13 45. Plaintiff has not received the value for which he bargained when he
 14 purchased the Subject Vehicle.

15 46. NISSAN NORTH AMERICA, INC. has deprived Plaintiff of the benefit
 16 of his bargain, exposed him to a dangerous safety defect without any notice, and
 17 failed to repair or otherwise remedy the FEB Defect contained in Subject Vehicle.
 18 As a result of the FEB Defect, the Subject Vehicle's value has diminished, including
 19 without limitation, the vehicle's resale value. Reasonable consumers, like Plaintiff,
 20 expect and assume that a vehicle's FEB system and related components are not
 21 defective, and will not malfunction while operating the vehicle as it is intended to be
 22 operated, and thus did not receive the benefit of their bargain, i.e., the price premium
 23 they paid attributable to the FEB system.

24 47. Plaintiff further expects and assumes that NISSAN NORTH
 25 AMERICA, INC. will not sell or lease vehicles with known safety defects, such as
 26 the FEB Defect, and will fully disclose any such defect to consumers prior to
 27 purchase, or offer a suitable, non-defective repair.

28 48. NISSAN NORTH AMERICA, INC. had extensive and exclusive notice



1 of the FEB Defect, as detailed above. Additionally, given NISSAN NORTH
2 AMERICA, INC.'s extensive and exclusive knowledge of the FEB Defect, its
3 latency, and NISSAN NORTH AMERICA, INC.'s inability to repair it, any notice
4 requirement would be futile.

5 49. However, NISSAN NORTH AMERICA, INC. wrongfully and
6 intentionally concealed, and continues to conceal, from the lease and/or pre-purchase
7 transaction to the present day, one or more defects in the Subject Vehicle's FEB
8 system that can cause it to falsely engage or otherwise not work as intended ("FEB
9 Defect"). The FEB Defect causes, among other things: (1) the Subject Vehicle to
10 detect non-existent obstacles, thereby automatically triggering the brakes and causing
11 the Subject Vehicle to abruptly slow down or completely stop with no actual need to
12 do so; and/or (2) the FEB system to deactivate itself, thereby distracting the driver
13 and rendering the FEB system disabled and useless. In either scenario, however, the
14 FEB system is not a safety feature, as NISSAN NORTH AMERICA, INC. claimed,
15 but rather an unpredictable and unreasonable safety hazard.

16 50. The FEB Defect can cause the Subject Vehicle to stop without warning
17 during normal and intended vehicle operation, thereby posing an unreasonable safety
18 hazard to drivers, passengers, other motorists, and pedestrians. Plaintiff has reported
19 significant, unexpected, phantom decelerations and stops due to the false engagement
20 of the Subject Vehicle's FEB system, even though no objects – vehicles, pedestrians,
21 or otherwise – were nearby. Additionally, Plaintiff has complained that the FEB
22 system also frequently deactivates itself, detracting his focus from the road and
23 rendering the FEB safety feature useless.

24 51. NISSAN NORTH AMERICA, INC. marketed, and continues to market,
25 the Subject Vehicle, and the FEB system specifically, as safe and reliable. NISSAN
26 NORTH AMERICA, INC., however, failed to disclose the FEB Defect to Plaintiff,
27 despite its knowledge that the Subject Vehicle was defective and not fit for the
28 intended purpose of providing Plaintiff with a safe and reliable transportation at the



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1 time of sale and thereafter. NISSAN NORTH AMERICA, INC. has actively
2 concealed, and continues to conceal from Plaintiff the true nature and extent of the
3 FEB Defect after failing to disclose it at the time of purchase, lease, or repair. Had
4 Plaintiff known about the FEB Defect, he would not have purchased the Subject
5 Vehicle, or would have paid less for the Subject Vehicle. As a result of his reliance
6 on NISSAN NORTH AMERICA, INC.'s concealment/omissions, and its active
7 concealment, Plaintiff has suffered an ascertainable loss of money, property, and/or
8 loss in value of the Subject Vehicle.

9 52. Despite notice of the FEB Defect from, among other things, pre-
10 production testing, consumer complaints, warranty data, and dealership repair orders,
11 NISSAN NORTH AMERICA, INC. has not recalled the Subject Vehicle to repair
12 the FEB Defect, has not offered Plaintiff a suitable repair or replacement free of
13 charge, and has not offered to reimburse Plaintiff for costs incurred relating to
14 diagnosing and repairing the FEB Defect, or for the value paid for the FEB feature
15 in the first place. NISSAN NORTH AMERICA, INC. has refused to repair or replace
16 the Subject Vehicle despite that the Subject Vehicle is under a comprehensive
17 warranty, as explained in detail below. Thus, NISSAN NORTH AMERICA, INC.
18 has wrongfully and intentionally transferred the cost of repair of the FEB Defect to
19 Plaintiff by fraudulently concealing the existence of the FEB Defect.

20 53. Under the warranties provided to Plaintiff, NISSAN NORTH
21 AMERICA, INC. promised to repair or replace defective FEB components arising
22 out of defects in materials and/or workmanship, such as the FEB Defect, at no cost
23 to owners or lessors of the Subject Vehicle. For illustrative purposes, NISSAN
24 NORTH AMERICA, INC. offers a 36-month or 36,000-mile Basic Warranty that
25 "covers any repairs needed to correct d effects in materials or workmanship of all
26 parts and components of each new Nissan vehicle supplied by Nissan."

27 54. NISSAN NORTH AMERICA, INC. breached its express and implied
28 warranties through which it promised, *inter alia*: (1) to provide a Subject Vehicle fit



1 for the ordinary purpose for which it was sold; and (2) to repair and correct
2 manufacturing defects or defects in materials or workmanship of any parts that it
3 supplied, including in the FEB System. Because the FEB Defect was present at the
4 time of sale or lease of the Subject Vehicle, NISSAN NORTH AMERICA, INC. is
5 required to repair or replace the Subject Vehicle pursuant to the terms of the warranty.
6 Instead, NISSAN NORTH AMERICA, INC. has wrongfully shifted to Plaintiff the
7 cost of repair of the FEB Defect, or replacing the Subject Vehicle. These costs are
8 significant, and unexpected by reasonable consumers.

9 55. NISSAN NORTH AMERICA, INC. and its network of authorized
10 dealers possess exclusive and superior knowledge and information regarding the FEB
11 Defect. Despite this, NISSAN NORTH AMERICA, INC. has failed to notify Plaintiff
12 of the FEB Defect, who could not have reasonably discovered the defect through due
13 diligence. Similarly, NISSAN NORTH AMERICA, INC. has failed to provide
14 Plaintiff with any remedy for the FEB Defect, despite voluminous customer
15 complaints.

16 56. While promoting the standard, quality, and/or grade of the Subject
17 Vehicle, NISSAN NORTH AMERICA, INC. knowingly concealed/omitted, and
18 actively conceals, the existence of the FEB Defect at the time of purchase or lease or
19 otherwise to increase its profits and decrease its costs (by selling additional defective
20 vehicles and transferring to Plaintiff the cost of the repair of the FEB Defect or
21 replacement of the vehicle).

22 57. NISSAN NORTH AMERICA, INC. knowingly omitted, concealed, and
23 suppressed material facts regarding the FEB Defect, and misrepresented the standard,
24 quality, or grade of the Subject Vehicle, all at the time of purchase or lease or
25 otherwise, which directly caused harm to Plaintiff. As a direct result of NISSAN
26 NORTH AMERICA, INC.'s wrongful conduct, Plaintiff has suffered damages,
27 including, *inter alia*: (1) out-of-pocket expenses for repair of the FEB Defect; (2)
28 costs for future repairs or replacements; (3) the sale of the vehicle at a loss; (4) the



1 diminished value of the vehicle; and/or (5) the price premium attributable to the FEB
 2 feature.

3 58. Plaintiff therefore asserts claims against NISSAN NORTH AMERICA,
 4 INC. for fraud, breach of express and implied warranties, and Violation of the Song-
 5 Beverly Act Section 1793.2. As alleged herein, NISSAN NORTH AMERICA,
 6 INC.'s wrongful conduct has harmed Plaintiff. As such, Plaintiff is entitled to
 7 damages.

8 59. Plaintiff hereby revokes acceptance of the sales contract.

9 60. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the
 10 "Act") Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a "consumer
 11 good" used primarily for family or household purposes, and Plaintiff has used the
 12 vehicle primarily for those purposes.

13 61. Plaintiff is a "buyer" of consumer goods under the Act.

14 62. Defendant, NISSAN NORTH AMERICA, INC., is a "manufacturer"
 15 and/or "distributor" under the Act.

16 63. Plaintiff hereby demands trial by jury in this action.

TOLLING OF THE STATUE OF LIMITATIONS

17 64. To the extent there are any statutes of limitation applicable to Plaintiff's
 18 claims—including, without limitation, the express warranty, implied warranty, and
 19 fraudulent omissions claims—the running of the limitations periods has been tolled
 20 by the following doctrines of rules: equitable tolling, the discovery rule, the
 21 fraudulent concealment rule, equitable estoppel, the repair doctrine, and/or class
 22 action tolling (*e.g.*, the *American Pipe* rule) arising from the pendency of the *Bereda,*
 23 *et al. v. Nissan North America, Inc.* matter (USDC Middle District of Tennessee,
 24 3:22-cv-00098).

25 65. Plaintiff had no way of knowing about Defendant's deception regarding
 26 the Automatic Emergency Braking and Forward Collision Warning Systems defect
 27 until the manifestation of the defect manifested and Defendant was unable to repair



1 it after a reasonable number of repair opportunities.

2 66. Plaintiff could not have discovered, through exercising reasonable
 3 diligence, that Defendant was concealing the Automatic Emergency Braking and
 4 Forward Collision Warning Systems defect and Defendant's conduct alleged herein
 5 within the time period of any applicable statutes of limitation.

6 67. Plaintiff did not discover the facts that would have caused a reasonable
 7 person to suspect that Defendant had concealed information about the Automatic
 8 Emergency Braking and Forward Collision Warning Systems Defect in Nissan
 9 vehicles until shortly before this action was filed.

10 68. Defendant owed a continuous duty to disclose to Plaintiff the accurate
 11 character, quality, and nature of Nissan vehicles suffering from the Emergency Brake
 12 Defect, and the inescapable repairs, costs, and damages resulting from the
 13 Emergency Brake Defect.

14 69. The status of limitations is tolled by various unsuccessful attempts to
 15 repair the Subject Vehicle.

JURISDICTION AND VENUE

17 70. This Court has jurisdiction over the subject matter and parties pursuant
 18 to 28 U.S.C. § 1332 *et seq.*, because the amount of recovery sought by Plaintiff
 19 exceeds the jurisdictional amount of \$75,000.00, and there is complete diversity
 20 among the parties.

21 71. The Subject Vehicle, as reflected in the sales contract, has an
 22 approximate value of \$21,116.00. Pursuant to the Song-Beverly Act, Plaintiff is
 23 seeking general, special, and actual damages, as well as civil penalties, up to two
 24 times the amount of actual damage. As such, Plaintiff seeks in the approximate
 25 amount of \$63,349.00. Plaintiff is also seeking reasonable attorneys' fees under the
 26 Act. Accordingly, Plaintiff's claims meet the jurisdictional threshold required under
 27 28 U.S.C. § 1332 (a).

28 72. Complete diversity exists as Plaintiff, ROBBIE CARROLL, is a citizen



1 of the state of California.

2 73. Defendant, NISSAN NORTH AMERICA, INC., is a Delaware
 3 corporation operating and doing business in the state of California. As reflected
 4 within Defendant's Statement of Information filed with the California Secretary of
 5 State, NISSAN NORTH AMERICA, INC. is incorporated and has its principal place
 6 of business in the State of Delaware. A true and correct copy of Defendant, NISSAN
 7 NORTH AMERICA, INC.'s Statement of Information filed with the California
 8 Secretary of State on November 1, 2021 is attached herewith as **Exhibit B**.

9 74. As such, the Defendant is not incorporated in California but in
 10 Delaware. Accordingly, there is complete diversity among the parties under 28
 11 U.S.C. § 1332 (a) (1), and Plaintiff has now alleged sufficient facts to establish
 12 subject matter jurisdiction.⁶

13 75. Venue is proper in, and Defendants are subject to the personal
 14 jurisdiction of this Court because the Subject Vehicle was purchased at Nissan of
 15 Costa Mesa, a NISSAN NORTH AMERICA, INC. authorized dealership and repair
 16 facility, located at 2850 Harbor Boulevard, Costa Mesa, CA 92626.

17 76. Venue is also proper, as Plaintiff, ROBBIE CARROLL, is an individual
 18 residing in the city of Gardena, in the state of California.

19 77. All acts of corporate employees as alleged were authorized or ratified
 20 by an officer, director, or managing agent of the corporate employer.

21 78. Each Defendant, whether actually or fictitiously named herein, was the
 22 principal, agent (actual or ostensible), or employee of each other Defendant, and in
 23 acting as such principal or within the course and scope of such employment or

24 ⁶ The Federal Rules are designed to minimize disputes over pleading technicalities. See *Ashcroft v. Iqbal*, 556 US 662, 678 (2009). A complaint is sufficient if it gives the defendant "fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atlantic Corporation et al. v. Twombly*, 550 U.S. 544, at 555 (2007); see *Starr v. Baca*, 652 F3d 1202, 1212 (9th Cir. 2011) (discussing traditional liberal theory of Rule 8(a)). In determining the sufficiency of a pleading, allegations of material fact are taken as true and construed in the light most favorable to the pleader. See *Erickson v. Pardus*, 551 US 89, 94 (2007) (emphasis added); see also *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001 (9th Cir. 2008); accord *Proft v. Raoul*, 944 F3d 686, 690 (7th Cir. 2019).

1 agency, took some part in the acts and omissions hereinafter set forth by reason of
2 which each Defendant is liable to Plaintiff for the relief prayed for herein.

3 **DEMAND FOR JURY TRIAL**

4 79. Plaintiff, ROBBIE CARROLL, hereby demands trial by jury in this
5 action.

6 **FIRST CAUSE OF ACTION**

7 **Violation of the Song-Beverly Act – Breach of Express Warranty**

8 80. Plaintiff incorporates herein by reference each and every allegation
9 contained in the preceding and succeeding paragraphs as though herein fully restated
10 and re-alleged.

11 81. These causes of action arise out of warranty and repair obligations of
12 NISSAN NORTH AMERICA, INC. in connection with a vehicle that Plaintiff
13 purchased and for which NISSAN NORTH AMERICA, INC. issued a written
14 warranty. The warranty was not issued by the selling dealership.

15 82. The Subject Vehicle was delivered to Plaintiff with serious defects and
16 nonconformities to warranty and developed other serious defects and
17 nonconformities to warranty including, but not limited to, suspension, electrical,
18 transmission, steering, and engine system defects.

19 83. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the
20 “Act”) Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a “consumer
21 good” used primarily for family or household purposes, and Plaintiff has used the
22 vehicle primarily for those purposes.

23 84. Plaintiff is a “buyer” of consumers goods under the Act.

24 85. Defendant NISSAN NORTH AMERICA, INC. is a “manufacturer”
25 and/or “distributor” under the Act.

26 86. The foregoing defects and nonconformities to warranty manifested
27 themselves in the Subject Vehicle within the applicable express warranty period. The
28 nonconformities substantially impair the vehicle’s use, value, and/or safety.



87. Plaintiff delivered the Subject Vehicle to an authorized NISSAN NORTH AMERICA, INC. repair facility for repair of the nonconformities.

88. Defendant was unable to conform the Subject Vehicle to the applicable express warranty after a reasonable number of repair attempts.

89. Notwithstanding Plaintiff's entitlement, Defendant NISSAN NORTH AMERICA, INC. has failed to either promptly replace the new motor vehicle or to promptly make restitution in accordance with the Song-Beverly Act.

90. By failure of Defendant to remedy the defects as alleged above, or to issue a refund or replacement vehicle, Defendant is in breach of its obligations under the Song-Beverly Act.

91. Under the Act, Plaintiff is entitled to reimbursement of the price paid for the Subject Vehicle, less that amount directly attributable to use by the Plaintiff prior to the first presentation of the nonconformities.

92. Plaintiff is entitled to all incidental, consequential, and general damages resulting from Defendant's failure to comply with its obligations under the Song-Beverly Act.

93. Plaintiff is entitled under the Song-Beverly Act to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in connection with the commencement and prosecution of this action.

94. Because Defendant willfully violated the Song-Beverly Act, Plaintiff is entitled in addition to the amounts recovered, a civil penalty of up to two times the amount of actual damages for NISSAN NORTH AMERICA, INC.'s willful failure to comply with its responsibilities under the Act.

SECOND CAUSE OF ACTION

Violation of the Song-Beverly Act – Breach of Implied Warranty

95. Plaintiff incorporates herein by reference each and every allegation contained in the preceding and succeeding paragraphs as though herein fully restated

1 and re-alleged.

2 96. NISSAN NORTH AMERICA, INC. and its authorized dealership at
3 which Plaintiff purchased the Subject Vehicle had reason to know the purpose of the
4 Subject Vehicle at the time of sale of the Subject Vehicle. The sale of the Subject
5 Vehicle was accompanied by implied warranties provided for under the law.

6 97. Among other warranties, the sale of the Subject Vehicle was
7 accompanied by an implied warranty that the Subject Vehicle was merchantable
8 pursuant to Civil Code section 1792.

9 98. The Subject Vehicle was not fit for the ordinary purpose for which such
10 goods are used because it was equipped with one or more defective vehicle
11 systems/components.

12 99. The Subject Vehicle did not measure up to the promises or facts stated
13 on the container or label because it was equipped with one or more defective vehicle
14 systems/components.

15 100. The Subject Vehicle was not of the same quality as those generally
16 accepted in the trade because it was sold with one or more defective vehicle
17 systems/components which manifested as suspension, electrical, transmission,
18 steering, and engine system defects.

19 101. Upon information and belief, the defective vehicle systems and
20 components were present at the time of sale of the Subject Vehicle; thus, extending
21 the duration of any implied warranty under *Mexia v. Rinker Boat Co., Inc.*, 174 Cal.
22 App. 4th 1297, 1304–1305 (2009), and other applicable laws.

23 102. Plaintiff is entitled to justifiably revoke acceptance of the Subject
24 Vehicle under Civil Code, section 1794, *et seq.*

25 103. Plaintiff hereby revokes acceptance of the Subject Vehicle.

26 104. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
27 Code, section 1794, *et seq.*

28 105. Plaintiff is entitled to rescission of the contract pursuant to Civil Code,



1 section 1794, *et seq.* and Commercial Code, section 2711.

2 106. Plaintiff is entitled to recover any incidental, consequential, and/or
3 "cover" damages under Commercial Code, sections 2711, 2712, and Civil Code,
4 section 1794, *et seq.*

5 **THIRD CAUSE OF ACTION**

6 **Violation of the Song-Beverly Act Section 1793.2(b)**

7 107. Plaintiff incorporates herein by reference each and every allegation
8 contained in the preceding and succeeding paragraphs as though herein fully restated
9 and re-alleged.

10 108. Pursuant to Civil Code, section 1793.2, subdivision (a), a manufacturer
11 that sells consumer goods in California, for which it has made an express warranty,
12 shall maintain service and repair facilities or designate and authorize independent
13 service and repair facilities to carry out the terms of those warranties.

14 109. Pursuant to Civil Code, section 1793.2, subdivision (b), when service
15 and repair of goods are necessary because they do not conform with the applicable
16 express warranties, service and repair shall be commenced within a reasonable time
17 by the manufacturer or its representative.

18 110. Civil Code, section 1793.2, subdivision (b), further provides that goods
19 shall be serviced or repaired so as to conform to the applicable warranties within 30
20 days and/or within a reasonable time.

21 111. The sale of the Subject Vehicle was accompanied by express warranties,
22 including a warranty guaranteeing that the Subject Vehicle was safe to drive and not
23 equipped with defective parts, including that of the suspension, electrical,
24 transmission, steering, and engine systems.

25 112. Plaintiff delivered the Subject Vehicle to NISSAN NORTH AMERICA,
26 INC.'s authorized service representatives on multiple occasions for repairs of defects,
27 which amount to nonconformities to the express warranties that accompanied the sale
28 of the Subject Vehicle.



1 113. Defendant's authorized facilities did not conform the Subject Vehicle to
 2 warranty within 30-days and/or commence repairs within a reasonable time, and
 3 NISSAN NORTH AMERICA, INC. has failed to tender the Subject Vehicle back to
 4 Plaintiff in conformance with its warranties within the timeframes set forth in Civil
 5 Code section 1793.2(b).

6 114. Plaintiff is entitled to justifiably revoke acceptance of the Subject
 7 Vehicle under Civil Code, section 1794, *et seq.*

8 115. Plaintiff hereby revokes acceptance of the Subject Vehicle.

9 116. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
 10 Code, section 1794, *et seq.*

11 117. Plaintiff is entitled to rescission of the contract pursuant to Civil Code
 12 section 1794, *et seq.* and Commercial Code, section 2711.

13 118. Plaintiff is entitled to recover any "cover" damages under Commercial
 14 Code sections 2711, 2712, and Civil Code, section 1794, *et seq.*

15 119. Plaintiff is entitled to recover all incidental and consequential damages
 16 pursuant to 1794 *et seq* and Commercial Code sections, 2711, 2712, and 2713 *et seq.*

17 120. Plaintiff is entitled in addition to the amounts recovered, a civil penalty
 18 of up to two times the amount of actual damages given that NISSAN NORTH
 19 AMERICA, INC. willfully failed to comply with its responsibilities under the Act.

FOURTH CAUSE OF ACTION

Fraud - Fraudulent Inducement – Concealment

21 121. Plaintiff incorporates herein by reference each and every allegation
 22 contained in the preceding and succeeding paragraphs as though herein fully restated
 23 and re-alleged.

24 122. NISSAN NORTH AMERICA, INC. intentionally and knowingly
 25 falsely concealed, suppressed, and/or omitted material facts including the standard,
 26 quality or grade of the Subject Vehicle and the fact that the FEB system in the Subject
 27 Vehicle is defective, exposing drivers, occupants, and members of the public to safety



1 risks with the intent that Plaintiff rely on NISSAN NORTH AMERICA, INC.'s
 2 omissions. As a direct result of Defendants' fraudulent conduct, Plaintiff has suffered
 3 actual damages.

4 123. In its quest to be commercially competitive, NISSAN NORTH
 5 AMERICA, INC. designed, tested, validated, marketed, and sold its Forward
 6 Emergency Braking system ("FEB") that is featured in the Subject Vehicle.
 7 According to NISSAN NORTH AMERICA, INC. itself:

8 [T]his intelligent feature uses radar technology to monitor a vehicle's proximity to the vehicle ahead, giving the driver audible and visual display warnings to help the driver reduce the vehicle's speed if a potential frontal collision is detected. If the driver fails to respond, the [Forward Emergency Braking] system can apply the brakes, helping the driver to avoid the collision or reduce the speed of impact if it is unavoidable. 4F⁷

9 124. As a result of NISSAN NORTH AMERICA, INC.'s failure to disclose
 10 to Plaintiff the material fact that the FEB system in the Subject Vehicle is defective,
 11 Plaintiff is required to spend thousands of dollars to repair or replace the FEB Defect
 12 or sell the vehicle at a substantial loss. The fact that the FEB system in the Subject
 13 Vehicle is defective is material because no reasonable consumer expects that he or
 14 them will have to spend thousands of dollars for diagnosis, repair, or replacement of
 15 the FEB Defect, and because Plaintiff has a reasonable expectation that the vehicles
 16 would not suffer from the FEB Defect.

17 125. The fact that the FEB system installed in the Subject Vehicle is defective
 18 is also material because it presents a safety risk and places the driver and occupants
 19 at risk of serious injury or death. Because of the FEB Defect, the Subject Vehicle
 20 may suddenly brake automatically while driving in traffic. Drivers and occupants of
 21 the Subject Vehicle are at risk for rear-end collisions and other accidents caused by

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 27 ⁷ The Confidence of Nissan Safety Technology, Nissan Safety Features & Technologies (Dec. 16, 2019),<https://www.nissanusa.com/experience-nissan/news-and-events/car-safetyfeaturestechnology.html> (last visited May 7, 2020).



1 the FEB Defect, and the general public is also at risk for being involved in an accident
2 with a Subject Vehicle. Plaintiff would not have purchased the Subject Vehicle but
3 for NISSAN NORTH AMERICA, INC.'s omissions and concealment of material
4 facts regarding the nature and quality of the Subject Vehicle and existence of the FEB
5 Defect, or would have paid less for the Subject Vehicle.

6 126. NISSAN NORTH AMERICA, INC. knew that its concealment and
7 suppression of material facts was false and misleading and knew the effect of
8 concealing those material facts. NISSAN NORTH AMERICA, INC. knew that its
9 concealment and suppression of the FEB Defect would sell more vehicles.

10 127. Despite notice of the FEB Defect from, among other things, pre-
11 production testing, numerous consumer complaints, warranty data, and dealership
12 repair orders, NISSAN NORTH AMERICA, INC. has not recalled the Subject
13 Vehicle to repair the Defect, has not offered its customers a suitable repair or
14 replacement free of charge, and has not offered to reimburse Plaintiff for the costs
15 incurred relating to diagnosing and repairing the FEB Defect or for the premium price
16 that paid for the FEB feature.

17 128. At minimum, NISSAN NORTH AMERICA, INC. knew about the FEB
18 Defect by way of customer complaints filed with affiliated dealerships and through
19 the NHTSA, as extensively documented above. As such, NISSAN NORTH
20 AMERICA, INC. acted with malice, oppression, and fraud. Plaintiff reasonably
21 relied upon Defendants' knowing, affirmative and active false representations,
22 concealment, and omissions. As a direct and proximate result of NISSAN NORTH
23 AMERICA, INC. false representations, omissions, and active concealment of
24 material facts regarding the FEB Defect, Plaintiff has suffered actual damages in an
25 amount to be determined at trial.

26 129. NISSAN NORTH AMERICA, INC. and its agents intentionally
27 concealed and failed to disclose facts relating to the Automatic Emergency Braking
28 and Forward Collision Warning Systems Defect.



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1 130. Defendant was the only party with knowledge of the Automatic
2 Emergency Braking and Forward Collision Warning Systems Defect because that
3 knowledge came from internal reports such as pre-release testing data, customer
4 complaints made directly to Defendant, and technical service bulletins. None of this
5 information was available to the public, nor did Defendant publicly or privately
6 disclose any of the information to Plaintiff. NISSAN NORTH AMERICA, INC. had
7 exclusive knowledge of the defect as described in detail hereinabove.

8 131. NISSAN NORTH AMERICA, INC. actively concealed information
9 from the public, preventing Plaintiff from discovering any of the concealed facts as
10 described in detail hereinabove.

11 132. Further, NISSAN NORTH AMERICA, INC. has learned more about
12 the Automatic Emergency Braking and Forward Collision Warning Systems Defect
13 and has intentionally concealed and suppressed that information; Nissan has failed to
14 recall the effected vehicles or otherwise inform Plaintiff of the Automatic Emergency
15 Braking and Forward Collision Warning Systems Defect.

16 133. Prior to the date of sale, on the date of sale, and on the date of each of
17 the repair attempts, NISSAN NORTH AMERICA, INC. had an opportunity to
18 disclose the Automatic Emergency Braking and Forward Collision Warning Systems
19 Defect to Plaintiff, but instead concealed from and failed to disclose to Plaintiff, any
20 of the known irreparable issues with the Subject Vehicle.

21 134. NISSAN NORTH AMERICA, INC. intended to deceive Plaintiff by
22 concealing the known issues with the Automatic Emergency Braking and Forward
23 Collision Warning Systems Defect in an effort to sell the Subject Vehicle at a
24 maximum price.

25 135. NISSAN NORTH AMERICA, INC. knew of the specific issues
26 affecting the Subject Vehicle, including the defective Automatic Emergency Braking
27 and Forward Collision Warning Systems Defect, prior to the sale of the Subject
28 Vehicle. Plaintiff's Vehicle was sold after NISSAN NORTH AMERICA, INC.



1 acknowledged these problems in Automatic Emergency Braking and Forward
2 Collision Warning Systems Defect without any disclosure to Plaintiff regarding the
3 same. When Plaintiff experienced repeated problems with the Automatic Emergency
4 Braking and Forward Collision Warning Systems Defect in the Subject Vehicle and
5 delivered it to NISSAN NORTH AMERICA, INC.'s authorized repair facility for
6 evaluation and repair, NISSAN NORTH AMERICA, INC. and its agents continued
7 to conceal the known Automatic Emergency Braking and Forward Collision Warning
8 Systems Defect and repeatedly represented to Plaintiff that they were able to, and did
9 fix the issue.

10 136. Plaintiff did not know about the Automatic Emergency Braking and
11 Forward Collision Warning Systems Defect at the time of the vehicle's sale. Plaintiff
12 also did not know of the irreparable nature of the problems at the time of any of the
13 repair attempts because NISSAN NORTH AMERICA, INC. and its agents
14 repeatedly represented that they were able to fix the Subject Vehicle upon return of
15 the vehicle to Plaintiff.

16 137. Had NISSAN NORTH AMERICA, INC. and/or its agents publicly or
17 privately disclosed the Automatic Emergency Braking and Forward Collision
18 Warning Systems Defect to Plaintiff at or prior to the sale, Plaintiff would not have
19 purchased the Subject Vehicle.

20 138. Plaintiff was harmed by Defendant's concealment of the Automatic
21 Emergency Braking and Forward Collision Warning Systems Defect because
22 Plaintiff was induced to enter into the sale of a vehicle that he would not have
23 otherwise purchased.

24 139. Plaintiff is a reasonable consumer who interacted with NISSAN
25 NORTH AMERICA, INC.'s sales representatives and/or reviewed materials
26 distributed by Defendant concerning Nissan vehicles prior to Plaintiff's purchase of
27 the Subject Vehicle. Plaintiff would have been aware of the Automatic Emergency
28 Braking and Forward Collision Warning Systems Defect and would not have leased



and/or purchased the Subject Vehicle if Defendant had disclosed the Emergency Brake Defect and its associated safety hazards to its sales representatives and/or the consumer public.

140. Defendant's concealment of these defects was a substantial factor in causing Plaintiff's harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. For general, special, and actual damages according to proof at trial;
2. For rescission of the purchase contract and restitution of all monies expended;
3. For diminution in value;
4. For incidental and consequential damages according to proof at trial;
5. For civil penalty in the amount of two times Plaintiff's actual damages;
6. For punitive damages;
7. For prejudgment interest at the legal rate;
8. For reasonable attorney's fees and costs of suit; and

For such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 12, 2022

QUILL & ARROW, LLP

Kevin Y Jacobson

Kevin Y. Jacobson, Esq.
Gregory Sogoyan, Esq.
Sarah E. Pfeffer, Esq.
Attorneys for Plaintiff,
ROBBIE CARROLL

Plaintiff, ROBBIE CARROLL, hereby demands trial by jury in this action.